

INSUN DEVELOPMENT SDN. BHD.

a

v.

AZALI BIN BAKAR

SUPREME COURT, KUALA LUMPUR
TAN SRI DATO' LAMIN MOHD YUNUS PCA
TAN SRI DATO' EDGAR JOSEPH JR. FCJ
DATO' MOHD DZAIDDIN ABDULLAH FCJ
(CIVIL APPEAL NO: 02-348-1994)
11 MAY 1996

b

CIVIL PROCEDURE: *Action for damages by purchaser for late-delivery of house by developer - Limitation - When does the purchaser's right to sue for agreed liquidated damages accrue - Whether purchaser's claim time-barred - Limitation Act 1953 s. 6(1).*

c

HOUSING DEVELOPERS: *Damages for late-delivery - Agreement in the statutorily prescribed Schedule E form - When does the purchaser's right to sue for agreed liquidated damages accrue - Construction of clause 18 of the standard form agreement.*

d

The respondent was a purchaser (the purchaser) under a sale and purchase agreement dated 12 December 1984 (the agreement) of a house to be erected by the appellant (the vendor). The agreement was in the form prescribed in the schedule to the Housing Developers (Control and Licensing) Regulations, 1982 (the 1982 Regulations).

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Clause 18(1) of the agreement provided for delivery of vacant possession of the house within 24 months of the date of the agreement. Clause 18(2) reads:

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If the vendor fails to deliver vacant possession of the said building in time the vendor shall pay immediately to the purchaser liquidated damages to be calculated from day to day at the rate of ten per centum (10%) per annum of the purchase price.

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The house, however, was only delivered on 25 March 1994. In the circumstances, on 31 July 1993, the purchaser caused an originating summons to be issued, and by that, claimed for a declaration that he was entitled to the agreed liquidated damages, *inter alia* for breach of contract calculated from 12 December 1986 to date of delivery of possession of the house. The High Court held in favour of the purchaser and the vendor appealed to the Supreme Court.

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The vendor's defence was that the purchaser's claim was barred by s. 6(1) of the Limitation Act, 1953. In particular it was contended that the purchaser's cause of action accrued on the day following the time limited under the agreement for completion and delivery of vacant possession of the house and,

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a thus, that the purchaser had commenced proceedings more than 7 months out of time.

b The High Court Judge in giving judgment for the purchaser relied heavily on the Malaysian Privy Council decision in *Loh Wai Lian v. SEA Housing Sdn. Bhd.* [1987] 2 MLJ 1, a decision based on the Housing Developers (Control and Licensing) Rules, 1970 (the 1970 Rules).

c The point of central importance to this appeal was whether the present case was governed by the judgment of the Privy Council in *Loh Wai Lian* and the crucial question was: regard being had to the provisions of clause 18 of the agreement, when did the purchaser's right to sue for the agreed liquidated damages for the delay accrue?

Held:

Per Edgar Joseph Jr. FCJ (delivering the judgment of the Court):

d [1] It is clear law, that in the absence of express contractual provision, the purchaser's right to sue for damages would accrue on the date of the breach of contract. But, the parties to a contract are free to regulate or modify their rights in the event of breach thereof in such manner as to postpone the date of accrual of their right to sue for damages.

e [2] The obvious difference between the contract of sale in *Loh Wee Lian* and the agreement in this case was this: under the former, the statutory formula for the calculation of the indemnity was modified by expressly stating not only the *terminus a quo* (the opening date) but also the *terminus ad quem* (the closing date), which was the date of actual completion and delivery of possession, whereas under the latter, although there was, by clause 18(2), also a formula for the calculation of liquidated damages, it only specifies the *terminus a quo* but not the *terminus ad quem*.

f [3] The purchaser's right of action for damages for breach of contract, following the general rule, accrued on the date of the breach, which in this case was the day after the time limited under clause 18(2) for the delivery of vacant possession, that is to say, on 12 December 1986. Accordingly, the purchaser having commenced proceedings only on 31 July 1993, was more than seven months out of time.

g [4] The purchaser's claim was statute-barred under the provisions of s. 6(l) of the Limitation Act, 1953.

h [Appeal allowed with costs]

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PROSEDUR SIVIL: Tindakan bagi gantirugi oleh pembeli kerana penghantar-serahan lewat rumah oleh pemaju - Penghadan - Bilakah hak pembeli untuk mendakwa bagi mendapatkan gantirugi jumlah tertentu terakru - Samada tuntutan pembeli terhad oleh masa - Akta Penghadan 1953 s. 6(l).

b

PEMAJU PERUMAHAN: Gantirugi bagi penghantar-serahan lewat - Perjanjian dibuat dalam borang Jadual E yang ditetapkan secara berkanun - Bilakah hak pembeli untuk mendakwa bagi mendapatkan gantirugi jumlah tertentu terakru - Tafsiran fasal 18 dalam perjanjian yang standard.

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Responden adalah merupakan pembeli (pembeli) sebuah rumah yang akan didirikan oleh perayu (penjual), di bawah satu perjanjian jualbeli bertarikh 12 Disember 1984 (perjanjian). Perjanjian tersebut adalah dalam borang yang ditentukan dalam jadual kepada Peraturan-peraturan (Kawalan dan Perlesenan) Pemaju Perumahan, 1982 (Peraturan-peraturan 1982).

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Fasal 18 (1) perjanjian memperuntukkan penghantarserahan milikan kosong rumah tersebut dalam tempoh 24 bulan dari tarikh perjanjian tersebut. Fasal 18(2) dibaca:

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Jika penjual gagal untuk menghantar-serahkan milikan kosong bangunan tersebut pada waktunya, penjual akan segera membayar kepada pembeli gantirugi jumlah tertentu yang akan dihitung dari hari ke hari pada kadar sepuluh peratus (10%) setahun dari harga belian.

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Rumah tersebut, walaupun bagaimanapun, telah hanya dihantarserahkan pada 23 Mac 1994. Dalam keadaan yang sedemikian, pada 31 Julai 1993, pembeli telah menyebabkan satu saman pemula dikeluarkan, dan melaluinya, telah menuntut untuk mendapatkan satu pengisytiharan bahawa beliau adalah berhak kepada gantirugi jumlah tertentu yang telah dipersetujui, antara lainnya bagi kemungkinan kontrak yang diperhitungkan daripada 12 Disember 1986 sehingga kepada tarikh penghantarserahan milikan rumah tersebut. Mahkamah Tinggi telah memutuskan dengan memihak kepada pembeli dan penjual telah merayu kepada Mahkamah Agung.

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Pembelaan penjual adalah bahawa tuntutan pembeli telah terhalang oleh s. 6(l) Akta Penghadan, 1953. Secara khususnya, ianya ditegaskan bahawa kausa tindakan pembeli terakru pada hari berikutan daripada masa yang telah dihadkan di bawah perjanjian tersebut bagi penyiapan dan penghantar-serahan milikan kosong rumah tersebut dan dengan itu, bahawa pembeli tersebut telah memulakan prosiding lebih daripada 7 bulan di luar masa.

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Hakim Mahkamah Tinggi dalam memberikan penghakiman untuk pembeli telah bergantung secara keseluruhannya pada keputusan Majlis Privi Malaysia iaitu

- a* dalam satu dari *Loh Wai Lian lwn. SEA Housing Sdn. Bhd.* [1987] 2 MLJ 1, suatu keputusan berdasarkan Peraturan-peraturan (Kawalan & Pelesenan) Pemaju-pemaju Perumahan, 1970 (Peraturan-peraturan 1970).

b Perkara yang paling penting kepada rayuan ini adalah samada kes semasa ini dirangkumi oleh penghakiman Majlis Privi dalam *Loh Wai Lian* dan persoalan yang sangat penting adalah: perhatian diberikan kepada peruntukan-peruntukan Fasal 18 Perjanjian tersebut, bilakah hak pembeli untuk mendakwa bagi mendapatkan ganti rugi jumlah tertentu yang telah dipersetujui untuk kelewatan tersebut terakru?

c **Diputuskan:**

Oleh Edgar Joseph Jr. HMP (menyampaikan penghakiman Mahkamah):

d [1] Ianya merupakan undang-undang yang jelas, bahawa dalam ketiadaan peruntukan kontraktual yang nyata, hak pembeli untuk mendakwa bagi mendapatkan ganti rugi akan terakru pada tarikh kemungkiran kontrak tersebut. Namun begitu, pihakpihak kepada sesuatu kontrak bebas untuk menyelaraskan atau mengubah-suaikan hak-hak mereka sekiranya berlaku kemungkiran terhadap kontrak tersebut dengan cara menangguhkan tarikh terakrunya hak mereka untuk mendakwa bagi mendapatkan ganti rugi.

e [2] Perbezaan yang ketara antara kontrak jualan dalam *Loh Wai Lian* dan perjanjian tersebut dalam kes ini adalah: di bawah kontrak yang terdahulu, formula berkanun bagi pengiraan tanggungan rugi telah diubah-suai dengan menyatakan secara nyatanya bukan sahaja terminus *a quo* (tarikh permulaannya), tetapi juga terminus *ad quem* (tarikh tamatnya), yang mana *f* merupakan tarikh penyiapan yang sebenarnya dan penghantarserahan milikan, sedangkan di bawah perjanjian yang terkemudian itu, walaupun terdapat juga, melalui Fasal 18(2), satu formula bagi pengiraan ganti rugi jumlah tertentu, ianya hanya menentukan *terminus a quo* tetapi tidak *terminus ad quem*.

g [3] Hak pembeli untuk mengambil tindakan bagi mendapatkan ganti rugi kerana kemungkiran kontrak, menurut kaedah biasa, terakru pada tarikh kemungkiran tersebut, yang mana dalam kes ini adalah hari selepas masa yang telah dihadkan di bawah Fasal 18(2) bagi penghantar-serahan milikan kosong, iaitu pada 12 Disember 1986. Oleh sebab itu, pembeli yang hanya *h* memulakan prosiding pada 31 Julai 1993, adalah lebih daripada tujuh bulan di luar masa.

[4] Tuntutan pembeli-pembeli tersebut adalah terhalang oleh statut di bawah peruntukan-peruntukan s. 6(1) Akta Penghadan, 1953.

i [Rayuan dibenarkan dengan kos]

Cases referred to:

Loh Wai Lian v. SEA Housing Sdn. Bhd. [1987] 2 MLJ 1 (*dist*)
Tuner v. Midland Railway Co. [1911] 1 KB 832 (*refd*)
Central Electricity Generating Board v. Halifax [1962] 3 AER 915 (*refd*)
Monckton v. Payne [1899] 2 QB 603 (*refd*)
Nasri v. Mesah [1970] 1 MLJ 32 (*refd*)
Reeves v. Butcher [1891] 2 QB 509 (*refd*)
Gibbs v. Guild [1881] 8 QBD 296 (*refd*)

Legislation referred to:

Housing Developers Act, 1966
Housing Developers (Control & Licensing) Regulations, 1982
Housing Developers (Control & Licensing) Rules 1970, r. 12(1)
Limitation Act 1953, s. 6(1)

For the applicant - Dato' Zaki Tun Azmi; (Cik Susamma Thomas with him), M/s. Rashid & Lee

For respondent - N Jegatheeson; M/s. John Ang & Jega, Johor

JUDGMENT

Edgar Joseph Jr. FCJ:

This is an appeal from the judgment of the High Court, Johor Bahru, ordering that judgment should be entered in favour of the plaintiff Azali bin Bakar, the purchaser (the purchaser) under a sale and purchase agreement dated 12 December 1984 (the agreement), of a single-storey dwelling house (the house) to be erected by the defendant Insun Development Sdn. Bhd., the corporate licensed developer (the vendor). The agreement was in the form prescribed in the schedule to the Housing Developers (Control & Licensing) Regulations, 1982 (the 1982 Regulations).

More particularly, the purchaser's claim by way of originating summons, issued on 31 July 1993, was for a declaration as to entitlement to agreed liquidated damages for breach of contract, calculated at the rate of 10% per annum on a daily basis on the purchase price of RM49,725 from 12 December 1986 to date of delivery of possession of the house. Alternatively, the purchaser's claim was for a declaration as to entitlement to liquidated damages as aforesaid, under the Housing Developers Act 1966 and the regulations made thereunder, to wit, the 1982 Regulations. In the event, the Judge held that the purchaser was entitled to the primary declaration prayed for and entered judgment in his favour, accordingly.

The essential facts may be shortly stated. The agreement was dated 12 December 1984 and by clause 18 thereof, it was provided, as follows:

18(1) The said building shall be completed by the vendor and vacant possession delivered to the purchaser within twenty-four (24) calendar months from the date of this agreement.

- a* (2) If the vendor fails to deliver vacant possession of the said building in time the vendor shall pay immediately to the purchaser liquidated damages to be calculated from day to day at the rate of ten per centum (10%) per annum of the purchase price.
- b* It was common ground that the house was not completed and available for delivery until 25 March 1994 and that there had thus been a delay from 12 December 1986 until 25 March 1994, on the part of the vendor in delivering vacant possession of the same.
- c* A demand for agreed liquidated damages by the purchaser having been refused by the vendor, the former commenced proceedings by way of the originating summons aforesaid for the declarations aforesaid and for consequential reliefs.
- d* The vendor's defence was that the purchaser's claim was barred by s. 6(1) of the Limitation Act, 1953. More particularly, it was contended that as the purchaser's claim was founded upon a breach of contract that is to say, of clause 18, his cause of action accrued on the day following the time limited under the agreement for completion and delivery of vacant possession of the house. On this view the purchaser had commenced the proceedings aforesaid more than seven months out of time and his claim was therefore barred by limitation.
- e* In giving judgment for the purchaser, the Judge relied heavily on the Malaysian Privy Council decision in *Loh Wai Lian v. SEA Housing Sdn. Bhd.* [1987] 2 MLJ 1. It follows, that the point of central importance to this appeal is whether the present case is governed by the judgment of the Privy Council in *Loh Wai Lian*, as the Judge thought.
- f* In *Loh Wai Lian's* case, by a contract in writing dated and executed on 18 March 1974, the plaintiff/buyer had agreed to purchase and the defendant/developer - a corporate licensed housing developer - had agreed to sell a shophouse to be constructed by the developer. By clause 17 of the contract it was provided as follows:
- g*
- h* Subject to clause 32 hereof and/or to any extension, or extensions of time as may be allowed by the controller the said building shall be completed and ready for delivery of possession to the purchaser within eighteen (18) calendar months from the date of this agreement. Provided always that if the said building is not completed and ready for delivery of possession to the purchaser within the aforesaid period then the vendor shall pay to the purchaser agreed liquidated damages calculated from day to day at the rate of eight per centum (8%) per annum on the purchase price of the said property from such aforesaid date to the date of actual completion and delivery of possession of the said building to the purchaser.
- i* The applicable legislation in *Loh Wai Lian* was the Housing Developers (Control and Licensing) Rules 1970 ("the 1970 Rules") r. 12(l) of which provided:

Every contract of sale shall be in writing and shall contain within its terms and conditions provisions to the following effect, namely: ... **a**

There were then set out twenty-one matters which were required to be incorporated in the contract of sale, of which the following were relevant for purposes of the case:

(o) Provisions specifying the date of delivery of the vacant possession of the housing accommodation to the purchaser which date shall be not later than 18 months after the date of signing of the contract of sale ... **b**

(r) Provisions binding on the licensed housing developer that he shall indemnify the purchaser for any delay in the delivery of the vacant possession of the housing accommodation. The amount of indemnity shall be calculated from day to day at the rate of not less than eight per centum per annum of the purchase price commencing immediately after the date of delivery of vacant possession as specified in the contract of sale ... **c**

For reasons which will appear later, it is important, to note that clause 17 provided a formula for the computation of the agreed liquidated damages which defined not only its *terminus a quo* (its opening date) but also its *terminus ad quem* (its closing date). **d**

In the event which transpired, there had been a delay in the completion of the shophouse and it was not until 7 November 1977 that it was in fact completed. Upon the developer refusing to pay the buyer's demand for liquidated damages for late delivery, the plaintiff/buyer had commenced an action against the former for liquidated damages for breach of contract. In O. 14 proceedings before the Senior Assistant Registrar, the plaintiff/buyer had succeeded, but on appeal before the Judge in Chambers, the developer's contention that the plaintiff/buyer's claim was barred by limitation by virtue of s. 6(1) of the Limitation Ordinance, 1953, was upheld and the order for summary judgment set aside. **e**

It was next the plaintiff/buyer's turn to appeal to the then Federal Court, her contention being that regard being had to the provisions of the proviso to clause 17 of the contract, the cause of action was not complete until the shophouse was actually completed and vacant possession given to her and that going by this date, she had commenced proceedings well within the time limited by the statute. **f**

Before the Federal Court, the plaintiff/ buyer had relied upon the cases of *Turner v. Midland Railway Co.* [1911] 1 KB 832, *Central Electricity Generating Board v. Halifax* [1962] 3 AER 915, 923, and *Monckton v. Payne* [1899] 2 QB 603, which are authority for the proposition that where the mode of assessing liquidated damages has been agreed, time will not run from the date of the breach but from the date when the damages can be ascertained. **g**

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- a* As to the plaintiff/buyer's contention that regard being had to the provisions of the proviso to clause 17, the cause of action was not complete until the shophouse was actually completed and vacant possession given to her, the Federal Court said this:
- b* Such a proposition would in fact mean that if the respondents did not complete the shophouse, accrual of cause of action could be postponed indefinitely. We do not think that the proviso to clause 17 of the agreement could have that effect on the Limitation Ordinance in an action founded on contract. A distinction must clearly be recognized between a cause of action and the relief claimed. The date of completion of the shophouse was only necessary to quantify the maximum relief under clause 17 which could be done subsequently by evidence. It could not constitute an impediment to the cause of action being complete. The breach had occurred on 18 September 1975 giving rise to a complete cause of action, and the accrual of cause of action would not be postponed by temporary lack of evidence pertaining to maximum relief claimable resulting from such breach irrespective of whether the damages claimed were liquidated or unliquidated. In the circumstances of the present case, we would not agree to the proposition that the cause of action was not complete until the shophouse was completed.

As for the cases of *Turner*, *Central Electricity Generating Board* and *Monckton*, the Federal Court distinguished them as follows:

- e* Clause 17 itself had provided that such damages were to be calculated on a day to day basis from the date of breach with the date of actual completion to be used for the purpose of calculating the maximum days claimable. Thus, even a day after the date of breach liquidated damages could be ascertained under clause 17. In any event, if the present statement of claim had been filed on or before 17 September 1981, no Court could have struck it out as disclosing no cause of action merely because the maximum liquidated damages claimable were not quantified. The action was not an ordinary claim for money due and owing, the sum of which ought to be ascertained.

- g* Not deterred the plaintiff/buyer pursued her appeal to the Privy Council [1987] 2 MLJ 1. The Court which comprised Lord Oliver, Lord Bridge, Lord Templeman, Lord Griffiths and Lord Mackay, unanimously decided in favour of the plaintiff/buyer and allowed the appeal thereby restoring the order of the Senior Assistant Registrar giving summary judgment.

- h* The crucial point for decision before their Lordships was, of course, when did the cause of action accrue, having regard to the particular contract before them, for it was with effect from that date that time commenced to run for purposes of the Limitation Act.

- i* In considering this question, their Lordships were of the view, that it was important, first of all, to identify the true nature of the developer's obligation. This is how their Lordships put it:

Mr. Kidwell QC on the other hand, contended that both the trial Judge and the Federal Court were wrong to approach the case on the footing that the claim was a simple claim for liquidated damages for breach of contract. He submitted and their Lordships agree, that the analysis of the accrual of the appellant's cause of action depends not upon the label which was put upon the sums which the respondent became obliged to pay but upon what, on the proper construction of the contract, was the true nature of the respondent's obligation.

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In deciding the question, what was the true nature of the vendor's obligations, their Lordships laid much stress on the 1970 Rules and the proviso to clause 17 of the contract of sale. This is how they put it.

The starting point is that this contract is one the terms of which are regulated by statute and which therefore falls to be construed in the light of the statutory provisions to which it was designed to give effect.

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Their Lordships then drew attention to the statutory obligation imposed on the developer in these terms:

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Rule 12(1)(r) imposed on the developer the obligation to indemnify the purchaser for any delay in delivery of possession and then went on to provide a formula by which 'the amount of indemnity' was to be calculated. The use of the word 'indemnity' is significant, for in its natural meaning, it imports the notion of compensation for a loss already suffered when the compensation is paid (see, for instance, *Yorkshire Electricity Board v. British Telecom*, [1986] 1 WLR 1029, 1034)

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Next, touching on the question how r. 12(1)(r), when incorporated had been modified by the contract of sale, their Lordships said this:

That rule, when incorporated into the actual contract between the parties, was modified in two ways. First, the 'indemnity' provided for by the rule was translated as 'agreed liquidated damages'. Secondly, the formula for calculation of the indemnity was modified by specifying not only the *terminus a quo* as provided in the rule but also the *terminus ad quem*, that is to say, the date of actual completion and delivery of possession.

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Their Lordships then went on to make this observation:

It is, in their Lordships' view, tolerably clear that the only rational purpose of defining a payment to be made by the vendor, by reference to what has become a conventional term, as 'agreed liquidated damages' was to make it clear that the purchaser was not to have any right to any other payment by way of damages in respect of the delay over and above what the vendor was undertaking to pay, for there could not sensibly be any prospect of a sum calculated according to mandatory statutory provisions being held to be irrecoverable as a penalty.

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Their Lordships then went on to caution:

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- a* But the description of the amount as 'liquidated damages' cannot in any event be determinative of the date on which the sum is to be payable. The clause has to be reasonably and sensibly construed. The obligation is introduced by the words 'the vendor shall pay' and there follows the calculation of the sum which he is to pay carefully defined by its opening and closing date.
- b* Applying what they considered to be a reasonable and sensible construction of clause 17 of the contract of sale, their Lordships said this:
- The whole tenor of the clause is, in their Lordships' view, that the vendor is assuming as a matter of contract and subject to the occurrence of the condition precedent that the building remains uncompleted on the stipulated date, an express contractual obligation to pay a single sum which cannot become due, because it cannot be ascertained, until the building has been completed and possession can be delivered.
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- Their Lordships recognised that the general rule was that a purchaser's right of action for damages for breach of contract accrues on the date when the breach occurs. But parties were free to enter into a contract displacing or modifying the general rule and this is what the parties before their Lordships had done by the incorporation of clause 17 into their contract of sale. Their Lordships accordingly concluded:
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- e* In their Lordships' judgment, the only sensible construction of clause 17 is, as Mr. Kidwell has contended, that it imposes an obligation to pay, in substitution for any other right to damages which the purchaser might otherwise have, a single sum to be calculated and ascertained at a particular date and that until that sum has been ascertained it does not become due and cannot be sued for.
- f* First of all, we must point out, that in the present case, the agreement is regulated by the 1982 Regulations, which, by reg. 12(1), provides that every contract for the sale and purchase of housing accommodation shall be in the standard form prescribed in Schedule E. The agreement with which we are concerned was, as we have indicated at the outset, exactly in the form prescribed in Schedule E with no supplementation.
- g*
- The crucial question is: regard being had to the provisions of clause 18 of the agreement, when did the purchaser's right to sue for the agreed liquidated damages, for the delay hereinbefore mentioned, accrue?
- h* It is clear law, that in the absence of express contractual provision, the purchaser's right to sue for damages would accrue on the date of the breach of contract (See *Nasri v. Mesah* [1970] 1 MLJ 32, 34; *Reeves v. Butcher* [1891] 2 QB 509, 511; *Gibbs v. Guild* [1881] 8 QBD 296, 302). But, the parties to a contract are free to regulate or modify their rights in the event of breach thereof in such a manner as to postpone the date of accrual of their right to sue for damages which, of course, was what had happened in *Loh Wai Lian*.
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In the present context, we have to consider whether there is any, and if so, what material difference between the contract of sale in *Loh Wai Lian* and the agreement here.

The obvious difference between the contract of sale in *Loh Wai Lian* and the agreement here, which we consider to be most material, is this: under the former, the statutory formula for the calculation of the indemnity was modified by expressly stating not only the *terminus a quo* (the opening date) **but also the terminus ad quem (the closing date)**, which was the date of actual completion and delivery, of possession, **whereas** under the latter, although there is, by clause 18(2), also a formula for the calculation of liquidated damages, it only specifies the *terminus a quo* but **not** the *terminus ad quem*. In our view, this difference is a matter of critical substance.

It is obvious from the judgment of the Privy Council in *Loh Wai Lian*, that but for the unusual language of clause 17 of the contract of sale, which had provided a formula for the computation of damages payable by the developer to the buyer for delays, by defining not merely the *terminus a quo* (the opening date) required under r. 12(l)(r) of the 1970 Rules but also the *terminus ad quem* (the closing date) - **not** required under r. 12(l)(r) - the case would have been differently decided for their Lordships said this:

If the question is asked 'in the absence of such an express provision when would the purchaser's right of action for damages for breach of contract accrue?', the answer is plainly the date on which the breach occurred. But parties to a contract are, of course, entitled to regulate or modify their rights in the event of breach in any way that they think fit and the accrual of any cause of action then becomes a matter of the correct construction of what they have provided. This appeal raises no point of principle but simply a question of what is the true construction of the contract in which the parties entered.

In our view, for the reasons stated, *Loh Wai Lian* is, therefore, readily distinguishable from the present case, and accordingly, the Judge was, with respect, wrong in holding that it was of decisive importance to the question which arose for decision.

It follows, therefore, that our answer to the crucial question aforesaid is; because the agreement by clause 18(2) had provided for a formula for the calculation of liquidated damages which defined the *terminus a quo* (the opening date) but **not** the *terminus ad quem* (the closing date), the purchaser's right of action for damages for breach of contract, following the general rule, accrued on the date of the breach, which in this case was the day after the time limited under clause 18(2) for the delivery of vacant possession, that is to say, on 12 December 1986. Accordingly, the purchaser having commenced proceedings only on 31 July 1993, was more than seven months out of time. We are thus driven to the inevitable conclusion that the purchaser's claim was statute-barred under the provisions of s. 6(1) of the Limitation Act, 1953.

a The appeal must, therefore, be allowed with costs here and below. The judgment of the Court below is set aside, and there will be substituted, in lieu thereof, judgment in favour of the vendor, that is to say that the purchaser is **not** entitled to the declarations prayed for or either of them nor to any other reliefs. The deposit will be refunded.

b Our human sympathies are for the purchaser but we are not at liberty to indulge them.

Reported by Jasmesh Kaur

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